

A CALL

TO FUNDERS

TACTICS IN LAW, POLICY AND ADVOCACY
FOR REPRODUCTIVE AND BIRTH JUSTICE

Summary Report of November 16, 2022 Webinar





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ABOUT THIS REPORT

On November 16, 2022, Funders for Birth Justice and Equity convened over 80 funders and donors for a special webinar on how philanthropy can support the ecosystem of activism toward reproductive and birth justice. A panel of four community-based legal experts shared how various interlocking systems threaten people's ability to make decisions about their bodies, families, and communities, along with suggestions for innovative advocacy strategies to transform systems. This report summarizes the specific strategies and invitations to action shared on the webinar; highlights examples of inspiring grassroots efforts taking place across the country; and invites funders to be a part of supporting the kind of transformative work that will bring us closer to achieving reproductive and birth justice.

AN INVITATION TO BRING US CLOSER TO REPRODUCTIVE & BIRTH JUSTICE

ACKNOWLEDGEMENTS

This collaborative report would not have been possible without the vision, time, labor and contributions of webinar panelists and movement lawyers, Farah Diaz-Tello, JD, Senior Counsel and Legal Director, If/When/How: Lawyering for Reproductive Justice; Indra Lusero, MA, JD, Founder and Executive Director, Elephant Circle; Lisa Sangoi, JD, Co-Founder and Co-Director, Movement for Family Power and Maymangwa Flying Earth, JD, Founder, Birthing Sovereignty. It was written by Maria Thomas and designed by Luna N.H., with invaluable input from the panelists and Betsy McNamara, Strategic Advisor to Funders for Birth Justice & Equity.

We would also like to thank Funders for Birth Justice and Equity partners—Early Childhood Funders Collaborative, Funders for Maternal Mental Health, Funders for Reproductive Equity, Women Donors Network, Groundswell Fund, the Irving Harris Foundation and Perigee Fund for making the webinar possible, and for supporting the creation of this report.

Finally, we are profoundly grateful to the organizers and activists whose work is featured and cited in this report for their commitment to building a more just world. We hope this offering acts as an invitation for more of us to join and support their inspiring work, so we can collectively shift what is possible.

For more information, or if you would like to engage further around the issues and strategies raised in the report, please reach out to:

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INTRODUCTION

The *Dobbs v. Jackson Women's Health Organization* decision, which overturned *Roe v. Wade*, is but the latest manifestation of a historical continuity of laws and systems targeting the people most marginalized by our society, and their ability to take care of their own bodies, families and communities.

These laws and systems related to criminal justice, child welfare, and medical care have a long history of criminalizing and punishing bodily autonomy and self-determination, especially for Black, Indigenous, migrant, disabled, young, queer, and trans people, and people surviving economic violence (which is why we will use terms like "criminal legal system," "criminal prosecution," "family policing" and "family regulation" system to underscore how these systems have never advanced justice or welfare). As a result we see inequities in maternal and infant health outcomes, early childhood development outcomes, rates of incarceration and family separation that seem intractable.

As philanthropy grapples with the question of how to bring about reproductive and birth justice in order to advance shared goals of community and family health and well-being, we cannot afford to ignore the long arc of violence these interconnected systems have enacted on marginalized communities. The criminal legal system is connected to the medical care system, and both are also connected to the family policing system. This work is deeply interconnected, and funders can play a crucial role in helping facilitate the cross-movement analysis, collaboration, and organizing needed to realize shared goals.

This report examines how the health care, family regulation, Indian Health Service, and the criminal prosecution system threaten people's ability to make decisions about their bodies, families, and communities, and how people are resisting and organizing to take care of themselves in the face of these powerful systems.

The disruption created by the *Dobbs* decision provides an opportunity to reassess not only how we got here, but also what we can do differently moving forward. Above all, this report is an invitation to funders to support the ecosystem of advocacy and activism that collectively improves maternal health, early child development, and reproductive health care. Thoughtful, strategic investments have the potential to make transformative shifts during this dynamic time.



Above all, this report is an invitation to funders to support the ecosystem of advocacy and activism that collectively improves maternal health, early child development, and reproductive health care.

UNDERSTANDING THE SYSTEMS IMPACTING COMMUNITIES

In the webinar, the panelists identified systems that threaten people's ability to care for themselves, their children, and their communities. Understanding these systems can help funders to achieve their goals of reproductive and birth justice by assessing their existing portfolio as well as expanding programs and activities. Many of these systems interact and are interconnected in ways that require a multi-disciplinary, multi-tiered funding approach. Investing in only one system can inadvertently reinforce the power of the other interconnected systems or undermine progress made in one system.



Understanding the systems we're interacting with is important for funders to know about because the nature of that system is important in figuring out strategies, including a community power building strategy in response to that system. If we aren't conscious of or factoring in the systems we are up against, we're not likely to be as effective in our strategies and tactics in response to them."

**– Indra Lusero, MA, JD, Founder
and Executive Director,
Elephant Circle**

CRIMINAL LEGAL SYSTEM

Criminalization is the social and political process by which society determines which actions or behaviors—and by who—will be punished by the state. At the most basic level, it involves passage and enforcement of criminal laws. While framed as neutral, decisions about what kinds of conduct to punish, how, and how much are very much a choice, guided by existing structures of economic and social inequality based on race, gender, sexuality, disability, and poverty, among others.”

—From *The Crisis of Criminalization*,
by Andrea J. Ritchie and Beth E. Richie


Criminalization functions “in service of maintaining and reinforcing existing relations of power.”

—From *No More Police*,
by Mariame Kaba and Andrea J. Ritchie

Farah Diaz-Tello from *If/When/How* underscored this analysis of criminalization, reminding participants that the criminal legal system was explicitly created to stigmatize, control and marginalize certain populations. What the law says is really only a small part of whether or not a person is going to experience criminalization.

The *Dobbs* decision underscores the tenuous position of pregnant people in society and how pregnancy can be used as a pretext to expand surveillance, criminalization, control and punishment of specific groups, despite precedent and data about access to abortion reducing harm not just for the pregnant person but for their family.

Understanding what criminalization and its purpose is, how it functions, and who it targets, is critical in understanding how criminalization is antithetical to reproductive and birth justice. Criminalizing laws, investments in carceral institutions of policing, and prisons and carceral logic are a threat to people, during pregnancy and postpartum, because of how they leverage pregnancy as a site of control on the basis of sex and race.



...if police and prosecutors decide that they want to punish somebody and label them with the stigma of criminality, they're going to find a way to do so, almost regardless of what the law says."

–Farah Diaz-Tello, JD, Senior Counsel and Legal Director, If/When/How

Reproductive and birth justice requires a divestment from the carceral systems that reinforce oppression on the basis of sex, race, gender, ability, and class and a complementary investment in community responses that transform and heal. The American Public Health Association [2021 policy statement](#) unequivocally recommends moving “towards the abolition of jails, prisons, and detention centers and to build in their stead just and equitable systems that advance public health and well-being.” Funders must take this call seriously and support efforts to interrupt criminalization, to decarcerate, and to ensure moratoria on building new carceral facilities, as such strategies support public health, perinatal health and early childhood development. Diaz-Tello highlighted how the criminal legal system was already affecting people who give birth, and especially those who experience pregnancy losses, even before the *Dobbs* decision. That fact points to the many different factors that play into whether somebody is criminalized during or because of their

reproductive experiences, even when they have constitutional protections. Some of them have to do with the circumstances of what happened: *When did they give birth? At what point in the pregnancy? Were they treated with trust and respect by the health providers that they might have turned to, or were they treated with suspicion, and turned over to law enforcement, and so much of that is dictated by factors that are just about who the person is in the world. What is their race...what is the body that they occupy in the world? Did pregnancy exacerbate their marginalization in society? Do they have a substance use disorder? Are they experiencing economic marginalization and living in poverty? Or do they have an immigration status that makes them vulnerable to deportation by the immigration system?*

The questions that Diaz-Tello raises are reflected in the web of criminalization graphic below, which shows how institutions and identities drive whether someone is criminalized or not.

INSTITUTIONS AND IDENTITIES DRIVE CRIMINALIZATION



Source: *The Crisis of Criminalization: A Call for a Comprehensive Philanthropic Response* by Andrea J. Ritchie and Beth E. Richie. Design and Infographics by Iván Arenas. Published by the Barnard Center for Research on Women © 2017



I like to say, you know people are waiting for like blonde white college students who self manage abortions with pills early in their pregnancy, to be swept up by law enforcement because of something that was in their period tracker. And that's not the reality of what the criminal legal system's involvement in people's lives looks like. It just looks like the perpetuation of marginalization, and that, you know we're just expanding the pool of people who are now subject to it. But the populations who are going to suffer the most are the ones who always have.

**–Farah Diaz-Tello, JD,
Senior Counsel and Legal
Director, If/When/How**

Similarly, the criminalization of reproductive autonomy plays out in specific ways, and is shaped by harmful value systems, and institutions, all of which can be interrupted and resisted. This is illustrated in the infographic below, which was developed in May 2019 by a group of reproductive justice and anti-criminalization organizers and advocates, along with *Resisting Criminalization of Reproductive Autonomy: Policy Dos and Don'ts*, a [policy resource](#) for interventions.

So many of the cases that If/When/How works on or encounters in their research in addition to criminalization for a self-managed abortion are criminalization of pregnancy loss, and essentially criminalizing trauma through the use of antiquated statutes, of “concealing a birth or abuse of a corpse” misapplied to people who experience pregnancy losses, and then privately dispose of fetal remains in ways that are available or significant to them. This trend has been documented in the study, “Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women’s Legal Status and Public Health” by Jeanne Flavin and Lynn Paltrow.

As Diaz-Tello concludes, it is impossible for people to experience birth justice, if they can be criminally punished for the outcome of their pregnancies. This understanding can help funders invest in projects that address the root causes of inequities and have transformational potential.



Source: Crowdsourced and created by Interrupting Criminalization Research in Action and the Center for Advancing Innovative Policy. Design by Noah Foster.

Maymangwa Flying Earth, in talking about the unique relationship and political status of Indigenous people within the United States, mapped out the complex interplay between local tribal government systems, state systems and federal systems.

Tribes are on par with the federal government, but states often have to interact with tribes and may experience conflict with them. The tension between state and federal governments built into our federalist legal system is exacerbated in the tension between states and tribes. How states deal with this varies from state to state.

Flying Earth illustrated the challenges this interplay presents through the following examples:

Specific tribal life programs. Funding specific tribal life programs can help impact that tribal community, but will not necessarily impact the tribe in the next state over, or tribal members living off tribal land.

State-based efforts. Funding state efforts which claim they will work with the Indigenous community may or may not have a direct impact on Indigenous communities depending

TRIBAL GOVERNMENT, TREATY RELATIONSHIPS, & THE INDIAN HEALTH SERVICE

on the extent to which the state is or is not working with those communities; and there might be some issues of stepping over the tribe's sovereign right to self govern if state-based implementation of a program is not tailored to address sovereignty.

Broken treaty promises. The federal government's "trust responsibility" built into the treaty framework is supposed to ensure a unique relationship between the federal government and tribes— as sovereign to sovereign. Over the last two hundred years the U.S. government has consistently undermined this relationship in myriad ways, including through the chronic underfunding of the Indian Health Service (IHS) which was something that

was promised and guaranteed to Indigenous people in treaties that were used for the colonization of their land.

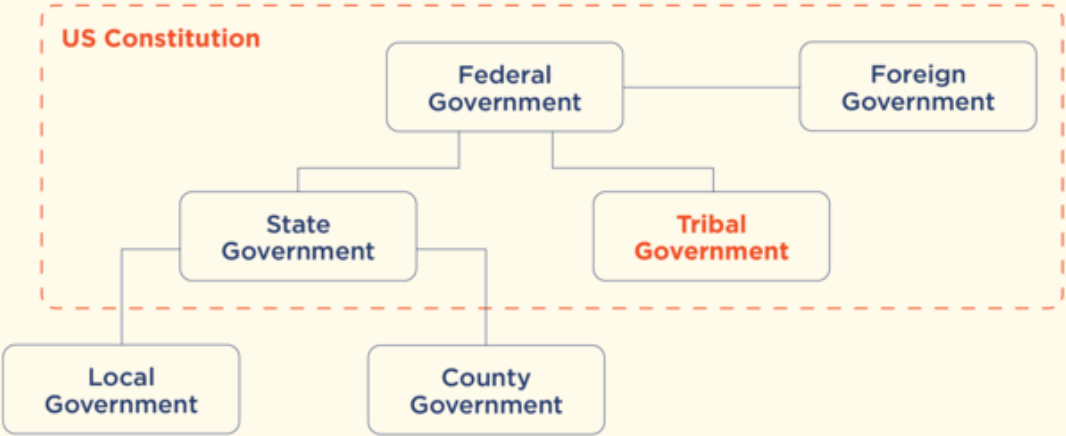
In light of how IHS is systematically and chronically underfunded, and not meeting the health care needs of Indigenous communities, tribes are having to look outside of that system to fill in gaps, which are glaring when it comes to reproductive health. A particularly egregious case in point is that Indigenous communities that are utilizing the Indian Health Service have never had access to abortion because of the Hyde amendment which prohibits federal dollars from being used for abortion.

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**—Maymangwa Flying Earth, JD,
Founder, Birthing Sovereignty**

Tribal Nations are Recognized Sovereigns

The US Constitution explicitly recognizes four sovereigns:



Source: domesticpolicycaucus.com/tribal-sovereignty

FAMILY REGULATION SYSTEM



...the network of state and federal professionals and agencies empowered to intervene in parenting and parenthood is often at complete cross purposes with protecting families and their safety."

Lisa Sangoi, from Movement for Family Power, reminded participants that one of the core tenets of reproductive justice is the right to raise your kids in safe, sustainable communities. Despite being characterized as "child welfare," "child protection," and "abuse prevention," the network of state and federal professionals and agencies empowered to intervene in parenting and parenthood is often at complete cross purposes with protecting families and their safety. Calling it the "family regulation system" better captures how this system inequitably surveils and controls the families and children it claims to protect.

The data speaks for itself. Over fifty percent of Black families have been investigated by this system compared to 28 percent of white families. Almost ten percent of Black children will be removed from their parents' care by this system, at some point in their life. The majority of Black mothers in this country, and in particular low-income Black mothers experience CPS knocking at their doors and questioning their parenting.

Indigenous children, meanwhile, are sixty percent more likely to be permanently separated from their parents than white children. This, despite the fact that there is no evidence that Black or Indigenous families are more abusive or neglectful. These statistics expose the racist discrimination, hypersurveillance and preemptive criminalization encoded into a “child welfare” system that deliberately targets Black and Indigenous parents.

The [Mandatory Reporting is Not Neutral](#) website cites that in 1963, 150,000 reports of child abuse were made. In 2019, after decades of “mandatory reporter” laws required by the Child Abuse Prevention and Treatment Act (CAPTA), 4.3 million reports were made. But that increase does not indicate an epidemic of child abuse, rather, it illustrates an increase in surveillance and the effects of deputizing healthcare workers, social workers, teachers, and community members as parenting police. Notably, the percentage of unsubstantiated reports in 1963 was close to 0%, but in 2019, 84% of these reports are unsubstantiated.

This is not to say that children are never harmed within their families. But family surveillance, policing and separation is a drastic intervention that does not heal



the conflation of poverty and neglect is written directly into statutes that define child maltreatment.”

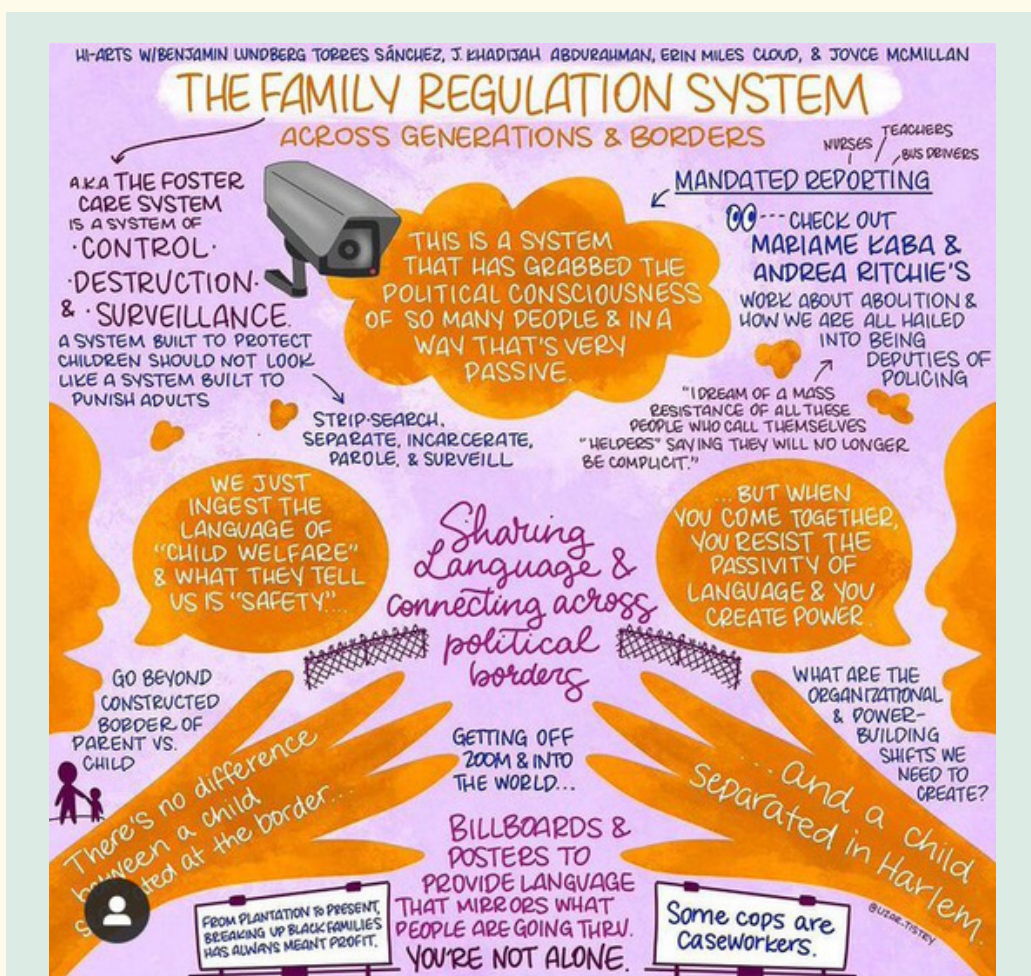
–From *Torn Apart*, by Dorothy Roberts

harm or prevent children from being harmed. Further, it has caused an enormous amount of harm, in particular to marginalized communities. Its use as an intervention has doubled in the last twenty years, with the highest rates being for Black and American Indian families. This disparity underscores how closely tied family policing is to white supremacy and colonization.

Poverty is the largest predictor of involvement in the family regulation system and “neglect” is the vast majority of reported child maltreatment. As Dorothy Roberts writes in *Torn Apart*, “the conflation of poverty and neglect is written directly into statutes that define child maltreatment.”

Carceral, misogynist, and eugenicist logics are threaded through the family regulation system leading to the punishment and separation of families for being poor rather than providing the material support parents and children need to thrive. Abortion restriction laws and the criminal legal system overlap and interlock to have the same effect: people are punished instead of supported in times of vulnerability and need. These are clear and consequential policy

choices. Different choices can be made. With the proliferation of abortion bans, post-*Dobbs*, the state has created even more reasons to police pregnant people and their families. This surveillance will result in even more unnecessary and traumatic family separations. Abolishing carceral systems as the American Public Health Association recommends, means abolishing the family policing system too – reproductive and birth justice will remain elusive without this.



Graphic recording by @LizAr_tistry of a conversation convened by Benjamin Lundberg Torres, Hi-Arts Fellow.

WHEN SYSTEMS INTERSECT

In recounting the story of an Indigenous woman in Montana that Indra Lusero worked with while a Staff Attorney at National Advocates for Pregnant Women (now called Pregnancy Justice), Lusero described how the criminal legal system, the family regulation system and the health care system, together, compounded the harms this woman experienced. In this particular case, the woman had walked herself to the hospital in the middle of the night, experiencing what she thought to be mysterious abdominal pains.

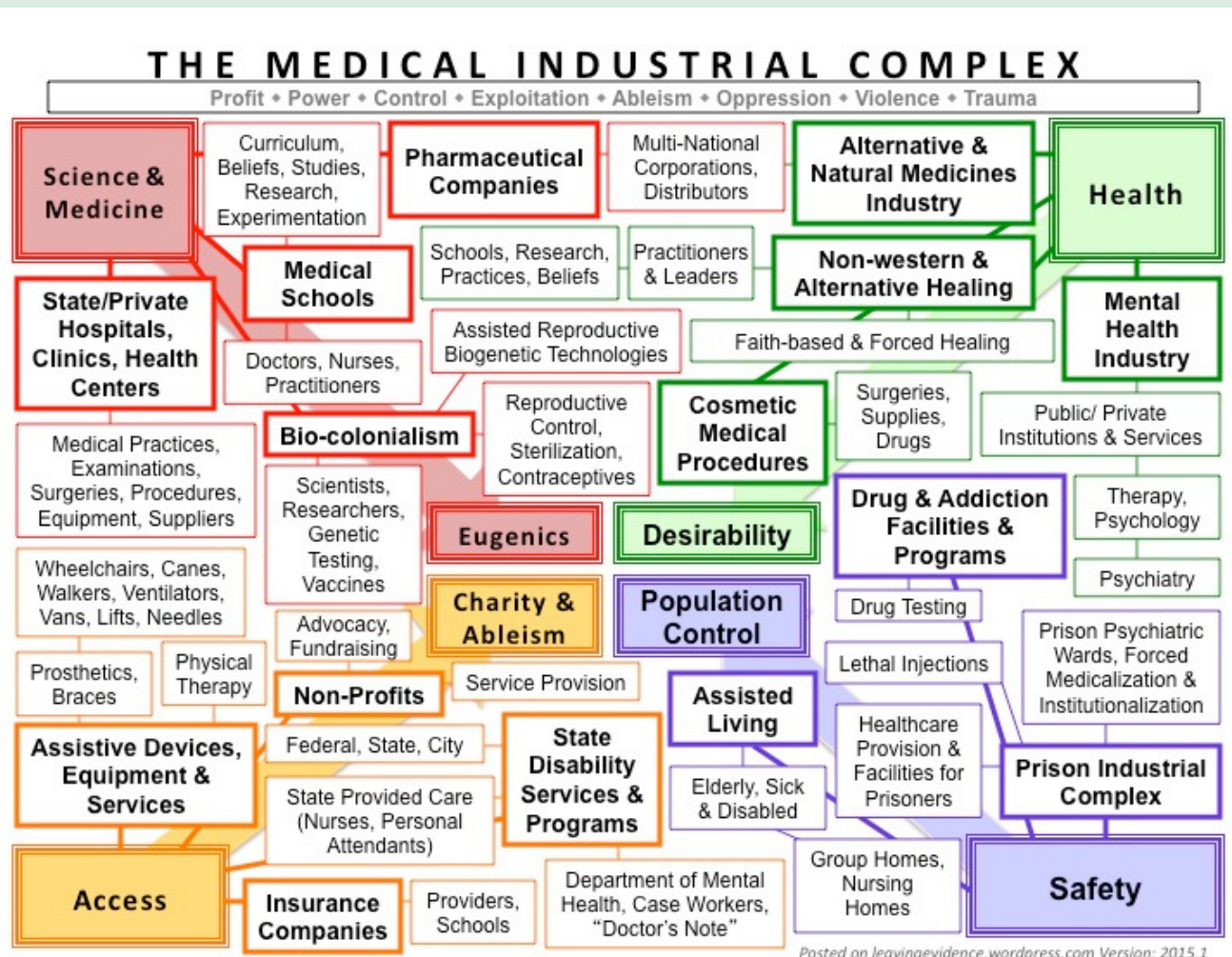
She did not know that she was in labor. She arrived at the hospital, not communicating that she was in labor, so the staff were distrustful of her when they discovered that she, in fact, was pregnant, and about to have a baby. Based on that distrust and the fact that then she tested positive for the use of drugs, she was immediately vulnerable to the criminal legal

HEALTH CARE SYSTEM

system and the family policing system, not to mention discriminatory health care. Her newborn was removed and she faced criminal charges. The fact of her walking to this hospital in the middle of the night implicates the federal government's failure under treaty to provide health care to her tribe.

The fact that she was at the hospital when she was exposed to these vulnerabilities, illustrates how the health care system communicates with these other systems, making it a primary site where people are exposed to the criminal prosecution system, and exposed to surveillance from family regulation system. Lusero encouraged participants to think of the health care system as a complex, at the level of a “military industrial complex.” Thinking about the medical industrial complex is a useful analogy because, as

Lusero explains, when we're dealing with a site for surveillance and violence, ultimately, the fact that it is complex is part of what makes it dangerous. We need to have strategies that meet complexity with complexity. Funders, rather than asking grantees to divide up the work, must instead insist on complexity, and trust that this complexity is itself the necessary tactic in response to the complexity of the system.



Source: leavingevidence.wordpress.com/2015/02/06/medical-industrial-complex-visual/

**CRITICAL
ISSUES
THAT NEED
ATTENTION
NOW**

HAALAND V. BRACKEEN

The US Supreme Court *Haaland v. Brackeen* case is a *facial challenge to the Indian Child Welfare Act that was created in 1978 to prevent family separation in Indigenous communities when about a third of Native children had been removed from their families . But in order for the court to address that law, or if they were to find that this law somehow unconstitutional, that's a **direct attack on tribal sovereignty**. The reason why that's important for Indigenous communities again goes back to the unique relationship, and this ability for tribes to self-determine and self-govern. And so, if the court is starting to attack that, then **we have grave concerns about what that might look like for the future of our communities**. And then beyond that, it is truly the systematic attack that's been happening for years by conservatives. They've been trying to dismantle this law for years and **at the heart of the issue is land**.

The attorneys that are representing this family that is challenging the law are attorneys for Big Oil, so there's all of these other agendas that play. This is just one example of how Indigenous communities have to confront these kind of multi-level attacks on our ability to self-determine.

–Maymangwa Flying Earth, JD, Founder, Birthing Sovereignty



a facial challenge to a government law, rule, regulation, or policy contends that is unconstitutional as written—that is, on its face—and therefore void for everyone and not just the particular litigant challenging it.

FAMILY REGULATION SYSTEM

ADOPTION & SAFE FAMILIES ACT

It was recently the twenty-fifth anniversary of the passage of a law called the Adoption and Safe Families Act, and what that law did was put massive amounts of federal money to incentivize the permanent dissolution of family. So what it says is, okay, let's say you get caught up in the family regulation system. What they tell you is you have fifteen months, that's one year and three months to fix whatever we think is wrong with you. You don't have housing? You've got fifteen months. Whatever it is that we have labeled you as a bad parent for, you have fifteen months to fix it, and if not, we will permanently kill off your family. It is the family death penalty.

It'll also mark the United States having the largest number of forcibly made orphans—kids who have parents who very much want to parent them, but are no longer permitted to at the risk of criminalization.

—Lisa Sangoi, JD, Co-Founder and Co-Director, Movement for Family Power

THE **HARMS** PEOPLE EXPERIENCE DURING THE PERINATAL PERIOD AND THE **LACK OF ACCOUNTABILITY** FOR THOSE HARMS

People are harmed during the perinatal period in the process of accessing health care. Survey data suggests that 1 in 6 people experience mistreatment during labor and birth, with the rate being as much as 1 in 3 for people of color. This is a unique type of harm that isn't well recognized. Yet, the United Nations has even studied this harm, brought language to it, describing it as violence against women, in a 2019 report. Researchers and innovators like the [Birth Place Labs'](#) Saraswathi Vedam, and birth and cultural tech innovator, Kimberly Seals Allers who created the [irth app](#) have done a lot to articulate and describe what these harms are.

Once they describe them, it becomes clear that there's no good accountability for these harms, no way to expect to get even an acknowledgment of the harm, much less redress, or a systemic change that would prevent that harm from happening in the future. Elephant Circle has asked the Office for Civil Rights at the U.S. Department of Health and Human Services to actually use the authority that they already have under these federal civil rights anti-discrimination laws to hold hospitals, health systems, providers accountable for those harms.

–Indra Lusero, MA, JD, Founder and Executive Director, Elephant Circle

THE THREAT POSED BY *DOBBS* TO OTHER ASPECTS OF PEOPLE'S REPRODUCTIVE LIVES

What folks might not know is that the *Dobbs* decision, which stripped constitutional protections from the right to abortion, essentially gives carte blanche to states to essentially do whatever they want that they believe will protect fetuses, even when it's not protective, and when it is harmful to pregnant folks. One could easily envision the ways that this could be used to circumscribe people's ability to, for instance, seek home births, punish them through the family regulation system, to control the practice of midwives, and to limit who can access that important and life-saving care.

An important aspect of the work that we do at If/When/How has always been to keep the state's power to regulate the decisions that people make in their reproductive lives cordoned off in that abortion jurisprudence, to keep that from infecting other areas of law that affect people's reproductive lives, for instance, litigating pregnant people's ability to make end-of-life decisions, and have those honored by health care staff.

**–Farah Diaz-Tello, JD, Senior Counsel
and Legal Director, If/When/How**

**TACTICS &
STRATEGIES**

**TO MAKE A
REAL IMPACT
ON COMMUNITIES**

EXAMPLES FROM PANELISTS

1

MOVEMENT BUILDING & COMMUNITY POWER

- Support movement building and organizing
- Build community, focus on relationships and not just programmatic deliverables
- Understand how issues and problems are interconnected
- Build community power by connecting struggles
- Invest in relationship building for the long-term

2

LEGISLATIVE & POLICY ADVOCACY

- Advocate for comprehensive legislation that addresses multiple intersecting issues
- Prioritize comprehensive anti-criminalization provisions in legislative advocacy
- Trust the community and start with those directly impacted so they are at the center of shaping policy

3

NARRATIVE CHANGE

- Invest in narrative change, like describing child protective services or child welfare services as the family regulation or family policing system
- Invest in telling stories that illustrate the ways criminal justice, family policing and medical systems are connected and used to restrict how people take care of themselves

4

FOLLOW THE LEAD OF THOSE CLOSEST TO THE ISSUE

- Advocate for comprehensive legislation that addresses multiple intersecting issues
- Prioritize comprehensive anti-criminalization provisions in legislative advocacy
- Trust the community and start with those directly impacted so they are at the center of shaping policy

Below are some examples of programs and legislation that marshal all of these tactics and strategies to make real change.

EXAMPLES OF MOVEMENT BUILDING & COMMUNITY POWER

Starting Over, Inc.'s FREE Project in Riverside, California

Started and run by formerly incarcerated people who have also had their kids taken away, they run a participatory defense program to support mamas with their family court cases called Free Hubs. Through this program they engage in political education with parents, and some parents join their organizing efforts, which enables them to build a base. With this base, they push for policy change, such as increasing the number of family members that can take in a kid when a mother is targeted because criminal convictions, no matter how old, often disqualify family members.


Parent Legislative Action Network and JMac for Families in NYC

Includes parents who are impacted and allied lawyers, researchers etc. They do everything from healing to advocacy to protest, putting up art all over the city to challenge the system, policy work, and more.

Operation Stop CPS in North Carolina

Uses grassroots organizing and participatory defense to organize parents to resist CPS through protests, civil disobedience, etc.

In each of these examples, we see directly impacted communities leading the charge, focusing on narrative change, building power with each other, strengthening their relationships so they are better able to protect and defend each other, engage in civil disobedience and push for radical change.



I think an inflow of funding to support these kinds of grassroots efforts all over the country could make a real impact towards growing this nascent movement.”

– Lisa Sangoi, JD, Co-Founder and Co-Director, Movement for Family Power

EXAMPLES OF LEGISLATIVE & POLICY ADVOCACY

2021 Birth Equity Bill package

that Elephant Circle helped pass was the most comprehensive state-based birth equity legislation in the country. Part of what made it unique is the fact that it targeted multiple systems through two omnibus bills that address a comprehensive range of policy levers that impact perinatal care: how perinatal care is paid for, but also standards for incarcerated, pregnant people. It tackled the rights that laboring people have when they go into the hospital, but it also addressed systems for community birth, and how community birth interfaces with hospital birth, by bringing together all of these issues in one set of bills. How Elephant Circle got it passed was by leveraging long-held relationships and by bringing folks with direct lived experiences for each of those pieces into the conversation at every step, not just to testify.

They were in stakeholder meetings before the bill was even begun. The experiences of the directly impacted are so often sidelined and not prioritized in the way policy gets made, but in this case their understanding and experience was prioritized in how the bills were written.

AB 2223 in California

In California, people were being prosecuted for pregnancy losses in clear violation of the law. If/When/How, leaning on partnerships with RJ leaders California Latinas for Reproductive Justice and Black Women for Wellness, was part of a strong coalition and led in crafting the bill including language that not only prohibits the criminalization of pregnancy loss and of self-managed abortion, but also **expands the scope of California's Reproductive Privacy Act to include a right to be free from state interference with reproductive rights.** Because of If/When/How's values and focus across the spectrum of pregnancy outcomes, they fought for language that would ensure that people could make decisions about pregnancy, and birthing care, and also creating a civil cause of action that would ensure that people

who experience coercion and punishment because of their reproductive decisions would be able to seek redress in civil courts. This effort was successful in the face of stiff opposition, a massive disinformation campaign, and harassment of supportive lawmakers by abortion opponents.

Proposition 3 in Michigan

If/When/How was invited to be part of the group that drafted language of the Michigan ballot initiative that got passed as Proposition 3. What Prop 3 does is guarantee a right to reproductive freedom under Michigan's constitution. IWH was able to bring their values and priorities to ensure that nobody is left behind, and to lift up calls from birthworkers and birth justice advocates in the state to ensure that people who are giving birth are covered by these newly crafted constitutional protections. It wouldn't have been enough to enshrine a right to abortion and leave behind people who are carrying their pregnancies to term. As a result of that coalition effort, and what IWH was able to bring to it, Michiganders have a clear and indelible protection from interference with the reproductive health care, decisions, and the power to sue under state discrimination laws for violations of those rights.

EXAMPLES OF NARRATIVE CHANGE

Lisa Sangoi from Movement for Family Power (MFP), drawing from the [Ayni Institute](#)'s social movement theory of change, emphasizes how critical it is in the nascent stage of a movement to work to build out your prophetic narrative.

She asks: What story are we—those of us who are impacted, those of us who are proximate to folks who are impacted, those who are in communities that are under surveillance—telling each other? What story are we going to build about ourselves, and then put out into the world regardless of what the New York Times op-eds are saying?



Grassroots non-profits should uniformly encourage funders to move away from project-driven portfolios; if the results enjoyed by the activist Right are any indication, \$1 billion for ideas would go a long way toward regenerating the devastated landscape of social justice."

**– Ruth Wilson Gilmore,
In the Shadow of the
Shadow State**

In MFP's case this work of narrative building happens alongside relationship and powerbuilding, as relationships are the life force of any movement. Narrative strategies for MFP include supporting zine making, social media and digital organizing and intently concentrating on cultivating a Black, brown and directly impacted audience.

EXAMPLES OF FOLLOWING THE LEAD OF THOSE CLOSEST TO THE ISSUE

In describing what new possibilities open up when young people gather and build community-based responses to the issues they are facing, Maymangwa Flying Earth had the following story to share:



I think what is most impactful to me is what happened in 2016, with the NoDAPL movement on Standing Rock. Standing Rock is one of my home communities, so I'm quite familiar with how that happened. But it really happened with youth-led, grassroots movements starting. And they were bringing to light these issues that the tribe maybe knew about. But their voice was what really amplified this issue, and really started the whole movement that happened there.

That was the one of the largest gatherings of tribes that people, some people say in over a century. And so, when we think about the over five hundred tribes that exist in this country, and how we've been systematically siloed off from one another, to have this momentous gathering of tribes was just incredible to witness and to see our collective power as tribes, and to really imagine what we might be able to do if we're able to unify on whatever issue we want to face.

The pipeline was eventually built. But, those fights are still ongoing. What also came out of that was youth, young people were really being empowered and reminded of their power to to confront whatever injustice it is that they're seeing, and to realize that they may not have to go through the usual channels of their tribal governments, and through law and policy advocacy through the federal systems, but that they can just start and do something on their own.

And what we've seen be born out of that movement is that there is a beautiful revitalization of these community-based efforts that my own community is working on there. There's a community-based health clinic, and community based education— a school that they're opening. And I think that other communities are seeing that as well and really feeling empowered to create their own solutions."

– **Maymangwa Flying Earth, JD, Founder, Birthing Sovereignty**

SUPPORT
INDIGENOUS YOUTH &
GRASSROOTS
COMMUNITY-BASED
RESPONSES TO PROBLEMS

RECOMMENDATIONS TO FUNDERS

STRATEGIES TO ADDRESS THE CRIMINAL LEGAL SYSTEM

- Fund interventions to interrupt criminalization, as well as policy and campaign interventions around decarceration. Read more funder recommendations on how to interrupt criminalization in the essential report [The Crisis of Criminalization](#), written by Andrea J. Ritchie and Beth E. Richie.
- Support pre-arrest diversion programs, bail funds and legal services that help criminalized communities.
- Fund grassroots organizations directly targeted by criminalization, and particularly criminalized people of color.
- Fund organizers and organizations working to defund police and other carceral institutions.
- Support community organizing and power building strategies like [participatory defense campaigns](#).
- Never fund the Prison Industrial Complex or groups that partner with police, prisons, detention centers as they increase criminalization and harm to marginalized communities.
- Reject criminalizing narratives of “good” vs. “bad” people, or “deserving” vs. “undeserving” communities (or victims, drug users, immigrants, etc.) in the stories you tell and the choices you make as funders.

- Customize funding opportunities to the lived realities of Indigenous existence, taking into account the various overlapping federal, state and tribal systems. Recognize that funding only at one level may miss the mark for addressing people on the ground, especially when they lack accountability to, and relationships with Indigenous communities.
- Expand beyond focusing solely on federal level changes, and IHS-related programming, and provide direct support for initiatives and programs that tribes are creating in response to local needs. Take a chance on smaller, lesser-known grassroots entities, and collectives.
- Support community-based organizations that prioritize the needs of Indigenous communities in urban areas. Over 60% of indigenous communities live in urban areas.
- Fund Indigenous youth and grassroots community-based responses to problems.
- Support community-based initiatives focused on healing and reclamation of tradition.

STRATEGIES TO SUPPORT **INDIGENOUS COMMUNITIES**

STRATEGIES TO ADDRESS THE FAMILY REGULATION SYSTEM

- Funders must learn about the family policing system, and create opportunities to amplify the voices, stories and narratives of those impacted by this system (beyond the handpicked spokespeople selected by those who profit from maintaining this system).
- Invest in and support emergency funds, legal resources and referral networks to help families navigate family court, Child Protective Services, and more.
- Fund and support campaigns to abolish mandatory reporting and family policing.
- Reproductive justice and birth justice funders should have portfolios that are specifically dedicated to looking at the family regulation system as the RJ issue that it is, and fund in particular Black and brown mothers who are organizing around this work. Currently groups and people who are doing work on the family regulation system continue to not have a place to seek funding.

- Support health care users organizing for universal access to quality health care, and to interrupt power dynamics in health care, like the way the medical lobby restricts other health care professions (known as “scope of practice”), or the way insurance companies control who is outside of our “networks.”
- Recognize the power differences between health care workers like doulas, and midwives in contrast to doctors, and support groups that are organizing to transform these power dynamics.
- Fund organizations and formations working to interrupt criminalization in health care spaces, and sever ties with carceral systems like policing and prisons, and interrupt modalities of coercive care such as non-consensual psychiatric holds and forced institutionalization.
- **Fund community-based non-police, non-coercive mental health crisis response**, care and healing programs that focus on prevention and community wellbeing. Examples of such programs can be found at millionexperiments.com and interruptingcriminalization.com/whats-next. Reject punitive and carceral response to public health issues.

STRATEGIES TO ADDRESS HEALTH CARE SYSTEMS

- Do not fund “reform” efforts, partnerships with policing, prisons or carceral systems, or anything that will expand the Prison Industrial Complex. Putting money into carceral systems **will always harm** reproductive and birth justice.

LEGISLATIVE & POLICY STRATEGIES

- Understand how issues and problems are interconnected and fund campaigns to pass comprehensive legislation that addresses multiple intersecting issues.
- Prioritize comprehensive anti-criminalization provisions in legislative advocacy.
- Trust the community and start with those directly impacted so they are at the center of shaping policy.

- Fund robust packages of reproductive protections that cover people throughout the course of their reproductive lifespan. Fund broad visionary strategies that fight for protections for all pregnant people and full spectrum reproductive health care, rather than only focusing on the legal protections for abortion which will leave many people behind.
- Do not get sucked into debating on terms framed by those who oppose reproductive justice, such as “fetal viability” standards, etc. This essentially amounts to saying there is a cliff during which people get to make decisions about their bodies, and when they reach the precipice, they’re no longer allowed to. It is saying after that point, you can be punished for the outcome of a pregnancy, and we can control and restrict your liberty to keep you from harming the pregnancy. Abortion jurisprudence has had a really corrosive effect on people's ability to self-determine all aspects of their reproductive lives.

SYSTEMS CHANGE & MOVEMENT BUILDING STRATEGIES

- Follow problems upstream and see where they are. For example, funding public defenders is great; funding the dismantling of the system that makes those necessary in the first place is even better.
- Instead of funding services tied to the family regulation system, fund projects that resource families directly or change systems that maintain poverty (like redlining).
- Focus, not just on the interventions with the individuals, but also on interventions that are going to shift culture and transform the landscape so that people aren't finding themselves subject to these marginalizing and stigmatizing systems in the first place.
- History shows us that broad-based social justice movements are essential in bringing us closer to freedom, liberation, bodily autonomy, self-determination and justice. The [Ayni Institute's report](#) on funding movements offers a useful primer on how to fund all the components that are necessary for a successful movement for social justice.
- Relationships are the lifeblood of movements. Move away from transactional metrics and towards transformational ones. Relationships are not traditional deliverables but they are invaluable in movement building and strengthening community power. Recognize, honor and fund organizations that prioritize deep and intentional relationship building.

CROSS-CUTTING STRATEGIES

- Fund multi year general operating expenses.
- Simplify application and reporting processes.
- Fund unrestricted grants.
- Offer technical support on a range of topics for grantees to avail themselves of if needed.
- Prioritize transformational measures like the power and strength of relationships which are invaluable and hard to quantify, rather than transactional metrics like “numbers served.”
- Support funding for healing, resting and dreaming.
- Ask what systems your current grantees are invested in or fighting against, and what systems aren’t reached in your portfolio.
- Consider whether the tactics used by your grantees reach the levers of change people need.
- Build community power by connecting struggles.
- Fund culture shift and narrative shift strategies. Reject narratives that demand “perfect victims” to “help”, and that throw marginalized communities (undocumented, drug-using, sex workers, etc.) under the bus. Fund the margins. The opposition accrues power by picking off those most vulnerable and abandoned by mainstream organizations and politicians (as evidenced by the horrific attacks on [trans youth](#)).
- Support discrete grassroots campaigns led by directly impacted communities.
- Understand local conditions and support building the infrastructure communities need to be able to absorb funding. Parched earth needs to prepare for water for its benefits to be felt.

CONCLUSION

The landscape of work related to abortion access, early childhood development and maternal and infant health are at a crossroads as disruptions and widening inequities require more and more people to recognize the connections between these issues. Reproductive and birth justice provide a useful framework for articulating those connections because they see the issue as one of structural inequality, human rights and justice.

Disparities in perinatal outcomes are the result of systems and structures that diminish the human rights of pregnant people and give their families unequal access to economic and political power. This report endeavors to more clearly articulate the interlocking systems that foster structural inequality, in order to invite funders and donors to challenge assumptions, within themselves and their own organizations, and more effectively advance their goals.

Knowing the interconnectedness of systems, their targeted and disparate impact on Black and Indigenous individuals, families, and communities, and that the *Dobbs* decision is part of a continuum of regulation, punishment and control, will help funders and donors to fund in ways that support the ecosystem of those working toward reproductive and birth justice, rather than fund in ways that perpetuate harm.

APPENDIX I
PANELISTS' ORGANIZATIONS'
APPROACHES TO
REPRODUCTIVE
JUSTICE



Focuses on multiple systems, and uses multiple tactics to be responsive to the intersectionality of people's lives. Focuses on 1) movement building, 2) community power and 3) public health, law and advocacy.

Movement building includes:

- Removing barriers so that innovative, powerful ideas from community can go from seed to fully blossoming.
- Providing fiscal sponsorship to start-up ideas and organizations.
- Providing direct cash assistance and support to birthworkers of color.
- Building models for birth justice work to illustrate what is possible.

Community power includes:

- Building the power of people in the perinatal period, and especially those who are most marginalized in the perinatal period.
- Building muscles so that we can take care of ourselves and each other through **training and education**.
- Providing a pathway for doula certification through our Doula is a Verb training.
- Strengthening birthworkers and their ability to engage in policy work.

Public health law and advocacy includes:

- Direct legal services for people in the perinatal period, including those who are marginalized as a result of being young, dealing with substance use, or being incarcerated.
- Policy change work that seeks to shift the conditions in which our communities live to bring about health and well being for all, including the most comprehensive state-based birth justice legislation passed in Colorado in 2021.



Our approach is encapsulated in our name elephant circle, which comes from the way elephants give birth in the wild. The herd will circle around the laboring elephant, stay for the duration of labor, providing connection, support, nourishment, but also protection and defense, and that's what we aim to do at Elephant Circle.

**– Indra Lusero, MA, JD,
Founder and Executive
Director, Elephant Circle**

if
when
how

Lawyering for
Reproductive
Justice

- Seeks to transform the legal landscape to realize reproductive justice for everyone.
- Focuses on the barriers that typically have not been at the forefront of reproductive rights advocacy such as ending the criminalization of self-managed abortion, ensuring access to reproductive health care for young people, and shifting the law to support autonomous and respectful care at birth.
- Trains and mobilizes the legal profession, from the moment they set foot on a law school campus throughout their practice, in support of reproductive justice.
- Litigates in a range of ways, including criminal defense from the earliest phases of the case all the way to appeals of last resort, civil rights lawsuits, and amicus briefings.
- Policy advocacy at the local, state and federal level—proactively moving laws that protect and expand people's rights as well as defensively preventing bills that harm people from becoming law.
- Runs Reprolegalhelpline.org where people can reach out for legal advice on a variety of issues, including legal risks related to self-managing an abortion, how to access abortion care as a minor, and addressing the harms that people have experienced in birth, and much more.
- Uses research to improve the conditions under which people have their reproductive experiences, such as research into criminalization of self-managed abortions.
- Conducts trainings for healthcare providers on mandatory reporting, and how mandatory reporters can reduce harm to their patients from the State.
- Runs ReproLegalDefenseFund.org that covers bail and other costs associated with being involved in a case and experiencing State violence.

Our work is encompassed by our organization's tagline, which is lawyering for reproductive justice. We don't just seek to establish rights, but to transform the law and the legal profession itself, to remove the barriers the State places on people who are making these fundamental decisions about their lives."

– Farah Diaz-Tello, JD, Senior Counsel and Legal Director, If/When/How

BIRTHING SOVEREIGNTY

- Offers an Indigenous focus to reproductive justice, both justice and birth rights, with the hope of leading to transformative models of tribal sovereignty.
- When it comes to sovereignty and birth, Indigenous communities have many challenges to overcome, and many barriers to face to have a birth experience that aligns with their culture and traditions.
- Indigenous people have to interface with multiple systems when it comes to reproductive health care and birth and parenting. These systems differ, depending on the state and the tribal land where an Indigenous person lives. Access to services also varies across geography.
- Birthing Sovereignty provides support to Indigenous people who may not have any perinatal health care in their home community and may have to travel hours away from their tribal lands, navigate the Indian Health Service, or Medicaid or private insurance or all of the above.
- Supports a range of interventions, like helping an Indigenous midwife explore how to open a birthing center in her tribal community; helping them navigate the federal health care laws that apply to tribes; and working with a tribal government to create law and policy to support birth within tribal lands.



Sovereignty is a very important principle for Indigenous communities, both personally and legally, because it represents a pathway for personal autonomy and self governance in order to heal from the effects of colonization.”

**– Maymangwa Flying Earth, JD
- Founder, Birthing Sovereignty**



Movement for Family Power

- Our organization very deeply believes in the humanity of all mothers, and that includes mothers living in poverty, Black mothers, Indigenous mothers, immigrant mothers, mothers who use drugs, mothers who are surviving intimate partner violence, mothers who do not have housing, and mothers who are living in marginalization.
- The family regulation or the family policing system exists explicitly and specifically to police poverty and marginalization.
 - Over fifty percent of Black children have been subjected to a family regulation system investigation.
 - Over eighty percent of parents with intellectual disabilities have had their children removed from their care.
 - Almost ten percent of Black children will be removed from their parents' care at some point in their life.
 - Indigenous children are sixty percent more likely to be permanently separated from their parents than white children.

You are so much more than what the system tells you. Your rights, your dignity, your humanity, your motherhood, is worth so much more than what the system has told you it is.

– Lisa Sangoi, JD, Co-Founder and Co-Director, Movement for Family Power

- MFP supports pregnant and birthing people and marginalized mamas who have had their kids taken away and are fighting back against the system.
- Supports folks who've been impacted in their healing.
- Builds political education to start to empower people to really fight back against this system.
- Builds with birthworkers, organizers, public defenders etc. to get engaged in campaigns to reduce the harms of this system while simultaneously building narrative change and people power.
- Consciousness raising campaigns to raise awareness about the injustices of the family policing system.
- Policy advocacy, movement building and organizing

APPENDIX II

RESOURCES

- [Elephant Circle](#)
- [If/When/How, Lawyering for Reproductive Justice](#)
- [Repro Legal Defense Fund](#) at If/When/How
- [Repro Legal Helpline](#) at If/When/How
- [Movement for Family Power](#)
- [Birthing Sovereignty](#)
- [Funders for Birth Justice & Equity](#)
- Colorado Politics op-ed on the webinar: [Reproductive justice goes beyond abortion](#)
- The Birth Place Lab's Giving Voice to Mothers [Survey](#) and [Executive Summary](#)
- The Ayni Institute's Report on [Funding Social Movements](#)
- [Repeal The Adoption and Safe Families Act \(ASFA\)](#)
- [Family Reunification, Equity & Empowerment \(FREE\) Project](#) at Starting Over, Inc.
- [JMAC For Families](#)
- [Operation Stop CPS](#)
- [Mandatory Reporting Is Not Neutral](#)
- [Rise Magazine](#)
- Dorothy Roberts' book [Torn Apart](#) and article [Abolish Family Policing, Too](#)
- Native American Rights Fund's [Protect ICWA Campaign](#)
- [This Land with Rebecca Nagle](#) podcast and its [coverage of ICWA](#)
- APHA's [Policy Statement on Advancing Public Health Interventions to Address the Harms of the Carceral System](#)
- [The Crisis of Criminalization: A Call for a Comprehensive Philanthropic Response](#)
- [Resisting Criminalization Of Reproductive Autonomy: Policy Dos And Dont's](#)
- [Abortion Criminalization is Part of the Larger Struggle Against Policing and Criminalization](#)
- [Defund the Police—Invest in Community Care](#)
- [One Million Experiments](#)
- Interrupting Criminalization's [What's Next](#) report
- [Dobbs was Not the Beginning: A Guide on Pregnancy Criminalization](#)
- [Mobilizing the Office for Civil Rights' Authority to Address Obstetric Violence and Obstetric Racism](#)
- Birth Rights: a resource for everyday people to defend human rights during labor and birth, in [English](#) and [Spanish](#)
- [Funding Equity: Birth Justice and Human Rights in Maternal and Infant Health](#)
- [Reimagine Child Safety](#), BLM LA
- [Criminal Injustice Reform Network](#)